



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF DRINKING WATER
Kevin W. Brown, P.E.
Director

Drinking Water Board

Dale Pierson, *Chair*
Anne Erickson, *Vice-Chair*
Myron Bateman
Jay Franson
Laurie McNeill
Nancy Melich
Dianne R. Nielson, Ph.D.
Charlie Roberts
Petra Rust
Ron Thompson
Chris Webb
Kevin W. Brown, P.E.
Executive Secretary

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

MINUTES OF THE OCTOBER 8, 2004 DRINKING WATER BOARD
MEETING HELD IN DRAPER, UTAH

Board Members Present

Dale Pierson, Chair
Anne Erickson, Vice Chair
Myron Bateman
Jay Franson
Charlie Roberts
Ron Thompson
Chris Webb

Board Members Excused

Laurie McNeill
Nancy Melich
Dianne Nielson, Ph.D.
Petra Rust

Guests

John Chartier, Sunrise Engineering
Eric Johnson, Smith Hartvigsen
Marie Owens, Metropolitan Water District
Scott Collard, Mayor, Fountain Green
Russ Donoghue, Rural Water
Doug Nielsen, Sunrise Engineering
Clyde Watkins, Rural Water Association
Tony Martineau, Garden City
Brett Cragun, Garden City
Florence Reynolds, Salt Lake City

Staff

Kevin Brown
Ken Wilde
Ken Bousfield
Rich Peterson
Eva Nieminski
Tim Pine
John Oakeson
Bill Birkes
Linda Matulich

ITEM 1 – CALL TO ORDER

The Drinking Water Board convened in Salt Lake City, Utah with Chairman Pierson presiding. The meeting was called to order at 1:00 p.m.

Chairman Pierson thanked Dave Ovard and his staff, of the Jordan Valley Water Conservancy District, for the tour of their facilities.

ITEM 2 – ROLL CALL

Chairman Pierson asked Kevin Brown to call roll of the Board members. The roll call showed there were 7 members present at the time.

ITEM 3 – INTRODUCTIONS

Chairman Pierson welcomed everyone and asked the guests to introduce themselves.

ITEM 4 – APPROVAL OF MINUTES – AUGUST 5, 2004, August 13, 2004 and September 1, 2004

Chairman Pierson stated a motion to approve the August 5, 2004; August 13, 2004 and September 1, 2004 minutes would be in order.

Myron Bateman moved the Board approve the August 5, 2004, August 13, 2004 and September 1, 2004 minutes.

Anne Erickson seconded.

**CARRIED
(Unanimous)**

ITEM 5 – SRF/CONSERVATION COMMITTEE REPORT

1) Status Report

Anne Erickson introduced the SRF/Conservation Committee Board members.

Ken Wilde reported that the State SRF Fund has only \$29,000 at the present time. Staff will get almost \$3.6 million a year in tax revenue money, which comes out to about \$300,000 a month. Some of the money will go to the loan/match fund under the Federal SRF program, which is around \$2,000,000. Staff receives money for the loan repayment fund around January 1st of each year.

Ken mentioned Kanarraville's loan is scheduled to close on October 19, 2004.

Ken reported on the Cash Forecast sheet in the packet.

Ken mentioned there is \$12.9 million available in the federal loan program; of which there is almost \$1.3 million in the Hardship grant fund, \$2.8 million in the Principal Repayments Fund, and a little over \$8 million of new grant money.

Ken reported Logan City closed their \$4.6 million loan and Beaver Dam Village closed their loan on September 16, 2004.

2) Engineering Fees

Bill Birkes reported a question was raised by the Board during the August 5, 2004 Teleconference concerning Engineering Fees. Staff did some research on engineering fees. Bill mentioned that Tim Pine said the Community Impact Board tried to utilize Rural Development's policy and followed their recommendations. Bill mentioned there is information in the Board packet from three different agencies.

Bill reviewed the Rural Development engineering fee forms. On the first page of the "Instructions for Negotiation of USDA Rural Development Financed Engineering Services", the last line under item 6 reads: "The fee percentages indicated on the table should not be interpreted as fixed, maximum or minimum, but rather as a guide to assist in negotiations between the OWNER, and the USDA Rural Development, and the ENGINEER." Bill mentioned this is a very common practice.

Bill reviewed the ASCE "How to Work Effectively with Consulting Engineers: Getting the Best Project at the Right Price" article. Bill mentioned some items of interest in the article are underlined. ASCE cautioned staff that the information in the article is not to be used as a minimum/maximum, but as a starting ground for negotiations between the client and the engineering company.

Bill reviewed the QBC "How to Select a Design Professional for your Project" material. This is a guide to Qualification Based Selection (QBC). This program started in 1972 and was primarily for federal contracts. The State of Utah has adopted a "Mini Books Law" similar to the QBC guide. The legislation mandates the whole qualification based selection for selected state agencies and design professionals, and allows other local and state agencies and water districts to adopt an ordinance.

Bill mentioned staff feels that it is not necessary for the Board to come out with some type of a policy statement, but recognize that staff could alter the financial assistance plan to include verbiage such as justifying alternatives and do some life cycle costs on a project when bringing it to the Board for approval.

Bill suggested the Board authorize staff to revamp the application form to make it clearer for the applicant, and to justify the engineering rates before the project starts. This would give staff a better chance to look at the estimated water bill. Without the Board making a policy statement, the application could be deferred based on a selection process. This would give staff the opportunity to consult with the Board when preparing a request for an applicant on selecting an engineering consulting firm.

Discussion followed.

Ron Thompson moved the Board implement the staff recommendation of having staff update the financial application form to be consistent with the recent amendments in rule, and add verbiage recommending applicants to utilize the "Qualification Based Selection" method when selecting a consulting firm.

Discussion on motion.

Charlie Roberts seconded.

**CARRIED
(Unanimous)**

3) Federal SRF Applications

a) Technical Assistance Fund

Rich Peterson reported on the Technical Assistant Fund is Rule R309-705-4(2)(d). Currently, there isn't any money in the fund. The Board may establish a fee to be assessed against loans authorized under the Federal SRF loan program. The revenue generated by this fee will be placed in a new fund called the SRF Technical Assistant Fund. The eligible assistance can range from grants, loans, systems based on an emergency, and any other circumstance that may fit in this fund. Consultants or local health department staff can be hired or staff can research issues specific to a certain system or circumstance. Staff could purchase equipment to be used for a specific system or circumstance. Staff would like to start putting money in the Technical Assistance Fund. Rich reviewed some examples.

Ken Wilde gave some background information on the Technical Assistance Fund program.

Discussion followed.

Dale Pierson moved the Board authorize the staff recommendation of: that on occasion when appropriate and when so advised by staff, the Board authorize the interest paid on specified loans, in whole or in part, to be put into the Technical Assistance Fund which will be monitored and reported to the Board during the Status Report agenda item at the Board meetings.

Charlie Roberts seconded.

Discussion on motion.

Chris Webb moved for an amendment to the motion that the Board authorize interest paid on specified loans, in whole or in part, to be put into the Technical Assistance Fund, which will be monitored and reported to the Board during the Status Report at the Board meeting with the following restrictions: 1) The funds will be capped at \$500,000, and 2) Any authorized use of the funds will be used by companies or entities outside of the Division of Drinking Water with the exception of purchasing equipment as approved by the Board.

Dale Pierson withdrew his motion.

Discussion on motion.

Myron Bateman seconded.

**CARRIED
(Unanimous)**

b) Fountain Green City

Ken Wilde reported there have been some staff and assignment changes in the Engineering Section.

Ken Wilde mentioned during the changes that have occurred, and preparing for the SRF/Conservation Committee meeting, it became evident that Fountain Green did not qualify for principal forgiveness according to the information staff had. During the SRF/Conservation Committee meeting, the members saw that the community didn't qualify for principal forgiveness. The members made their recommendation based on the staff recommendations that the loan be approved the way it is written in the Board packet.

However, since the Board packet was mailed, the City has provided documentation that it qualifies for principal forgiveness. Ken reviewed the background information, and needed changes to the application. In order to reduce the average water bill to 1.75% of the MAGI, the city qualifies for 13% principal forgiveness. An alternative was provided to the Board that rather than authorize 13% principal forgiveness and a fee of 2.76% for 20 years, that the technical assistance fee be decreased to 1.32% to achieve the equivalent 13% principal forgiveness.

Anne Erickson commended staff for the work they are doing during the changes being made in the Engineering Section.

Scott Collard, Mayor of Fountain Green, addressed the Board.

Discussion followed.

Myron Bateman moved the Board authorize a loan of \$1,722,000 at 1.32% for 20 years and the money be used in the Technical Assistance Fund. If the Technical Assistance Fund reaches the \$500,000 peak, or Fountain Green has reached the end of their loan, the additional collections of the technical assistance fees would become interest. Fountain Green City will resolve the appropriate issues on their compliance report.

Ron Thompson seconded.

**CARRIED
(Unanimous)**

ITEM 6 – APPOINTMENT OF ASSISTANT EXECUTIVE SECRETARY

Chairman Pierson stated a motion to appoint an Assistant Executive Secretary to the Board would be in order.

Chris Webb moved the Board appoint Ken Wilde as the Assistant Executive Secretary to the Board.

Anne Erickson and Charlie Roberts seconded.

**CARRIED
(Unanimous)**

Charlie Roberts left the Board meeting.

ITEM 7 – GARDEN CITY BILATERAL COMPLIANCE AGREEMENT

Ken Bousfield reported staff has determined through testing that the Swan Creek Spring serving Garden City is under the direct influence of surface water. As a result, staff has directed Garden City to install treatment consistent with the rule.

In talking with other communities in Wyoming, Garden City learned there is a provision in the EPA Rule allowing filter avoidance if they met certain criteria. Garden City asked the state if they could avoid filtration. Staff looked at the enabling requirements in the federal rule, and suggested Garden City enters into a contract with the Division. The contract is in the packet.

Ken mentioned the reason staff is presenting this before the Board, is there is an element in the contract that staff would like some assurance on. Ken structured the contract to be between the Division of Drinking Water and Garden City, with the Board acting as an appeals body. Fred Nelson, Attorney General for the Division recommended this approach.

Ken directed the Board's attention to an item on page 2 of the proposed contract that lists the things the Executive Secretary agrees to do. Ken then read the following provision of the contract:

Proceed with rulemaking to enable filter avoidance should water quality data show that Swan Creek Springs qualifies. This includes preparing rule changes, submitting such changes to the Drinking Water Board and to promote such changes with the Board, and all other associated and incidental issues associated with successful rulemaking.

Ken went on to explain the Division of Drinking Water and the Executive Secretary were agreeing to deliver a rule change if certain conditions were met. Ken clarified that it is the Board, and not the Division nor the Executive Secretary that is legally able to adopt and enforce new rules. However, to preserve the Boards role as an appeals body, Ken structured the contract between the Executive Secretary and Garden City.

If view of the Division proposed commitment to deliver a Rule change, if the conditions are met, staff is seeking the Boards support for the Division to enter into the contract.

Chris Webb moved that the Board vote to show its support to the Division to proceed with the bilateral compliance agreement with Garden City.

Ron Thompson seconded.

Discussion on motion.

Anthony Martineau, an attorney representing Garden City asked if the Board would adopt the needed rule change if the conditions were met. The Board replied that they would adopt the rule change if the conditions were met.

CARRIED
(Unanimous)

ITEM 8 – RULE R309-305 – BACKFLOW TECHNICIAN CERTIFICATION

Ken Bousfield reported that this is the third time this rule was presented to the Board for consideration. At the first meeting, the Board authorized staff to actively seek public comment, and then proceed with rulemaking. At the second meeting, staff outlined the changes made to the rule in response to comments received. In response, the Board authorized staff to proceed with the revised rule. Following submission of the rule to the Division of Administrative Rules, Kent Bishop, of the Governor’s office, suggested a further change. Staff contacted Mr. Bishop to see if he agreed that his suggestion constituted a “non-substantive” change. Mr. Bishop agreed that it was non-substantive.

Ken asked the Board to authorize staff to proceed with finalizing the rule and then authorize staff to finalize the non-substantive change.

Ron Thompson moved the Board adopt both staff recommendations to: 1) authorize staff to file the effective notice with the Division of Administrative Rules to the proposed changes to R309-302 as is, and 2) authorize staff to subsequently file the following non-substantive change to address the change in verbiage.

Jay Franson seconded.

CARRIED
(Unanimous)

ITEM 9 – CHAIRMAN’S REPORT

Dale Pierson gave the floor to John Oakeson during this agenda item.

a) Awards

John Oakeson is the Chairman of AWWA’s Intermountain Section. The Intermountain Section held their annual conference at Sun Valley, Idaho last month. There are two awards the Section would like to present to Eva Nieminski.

John read a resolution written up for Eva Nieminski for outstanding service with her association of AWWA’s Intermountain Section.

John mentioned on the national level, AWWA has the Fuller Award, which is one of the foremost awards that an individual can receive on a national level. A few years ago, the Intermountain Section of AWWA established the Charles W. Wilson Award as the section's equivalent to the Fuller Award. John gave some background on Charlie Wilson and the Award program. John read some of the qualifications for the Charles W. Wilson Award. John noted some of Eva's accomplishments this past year with the AWWA's Intermountain Section.

John presented the awards to Eva.

ITEM 10 – DIRECTORS REPORT

Kevin Brown followed up on Eva's accomplishments. Eva is one of the pre-eminent water engineers around the world. Eva's work with cryptosporidium and water treatment is nationally recognized. Eva is on various national committees' and testifies on a national level with her expertise when needed.

The Board recognized Eva.

a) Twenty-five (25) Worst Drinking Water Systems List

Kevin Brown reported on the top 25 worst drinking water systems list. There are five new one's that have been added to the list. There are several systems on the list that are pending on getting some issues resolved.

b) Rural Water Association's Annual Conference – 2005

Kevin Brown reported the Rural Water Association's Annual Conference would be the first week in March. The Board meeting will be held on the last day of the conference, which will be March 4, 2005.

c) Utah Water Users' Annual Conference – 2005

Kevin Brown reported the Utah Water Users' Annual Conference would be held about a week after the Rural Water Conference.

d) 2005 Board Meeting Schedule – Draft Copy

Kevin Brown reported there is a Proposed 2005 Board meeting schedule in the packet for the Board's review. The Board is welcome to make any changes they would like to on the schedule. If the Board has any recommendations, let Kevin know.

The 2005 Board meeting schedule will be presented at the next Board meeting for approval.

e) Perchlorate Fact Sheet Information

Kevin Brown reviewed the Perchlorate Fact Sheet information that is in the packet.

Kevin mentioned EPA is moving forward with a Perchlorate standard. The standard will be out in about a year. EPA reported there are 8 states that have adopted provisional health advisory standards. Right now, Magna is the only entity that has an impact on Perchlorate with their drinking water.

Discussion followed.

f) Enforcement Escalation Policy

Kevin Brown reported EPA in 1995/1996 talked to him and Ken Bousfield about writing an Enforcement Escalation Policy. Kevin wrote the document, which is in the packet, and sent it to EPA. Kevin hasn't heard back from EPA yet on their comments to the document.

Discussion followed.

ITEM 11 – NEWS ARTICLES

The news articles are in the packet.

ITEM 12 – LETTERS

The letters are in the packet.

ITEM 13 – UPDATE

The update is in the packet.

ITEM 14 – NEXT BOARD MEETING

The next Drinking Water Board meeting is scheduled for December 10, 2004 at the Division of Drinking Water offices in Salt Lake City. There will be a tour of the Magna Water Treatment Plant facilities in the morning.

ITEM 15 - OTHER

No other business.

ITEM 16 - ADJOURN

Chairman Pierson stated a motion to adjourn the meeting was in order.

A motion was made by three Board members to adjourn the meeting at 2:50 p.m.

Anne Erickson seconded.

**CARRIED
(Unanimous)**

Linda Matulich
Recording Secretary